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October 23, 2009

VIA FEDERAL EXPRESS

Ms. Anne K Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024



Re: **Finance Docket No. 35045 (Sub-No. 1)**
Duluth, Winnipeg and Pacific Railway Company -- Trackage Rights
Exemption -- Duluth, Missabe and Iron Range Railway Company

Dear Secretary Quinlan:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption of Duluth, Winnipeg and Pacific Railway Company Pursuant to 49 C.F.R. § 1180.2(d)(7)**, dated October 23, 2009. A check in the amount of \$1,200.00, representing the appropriate fee for this filing, is attached.

Please note that this filing includes a color map.

One extra copy of this transmittal letter and of the Notice also are enclosed. I would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Duluth, Winnipeg and Pacific
Railway Company

TJL:tl

Enclosures

ENTERED
Office of Proceedings

OCT 26 2009

Part of
Public Record

22 5925

ORIGINAL
[Contains Color Map]

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 35045 (SUB-NO. 1)

DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

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Office of Proceedings
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Public Record

**VERIFIED NOTICE OF EXEMPTION OF
DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

FEE RECEIVED

OCT 26 2009

**SURFACE
TRANSPORTATION BOARD**

FILED

OCT 26 2009

**SURFACE
TRANSPORTATION BOARD**

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**ATTORNEYS FOR DULUTH, WINNIPEG
AND PACIFIC RAILWAY COMPANY**

Dated: October 23, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35045 (SUB-NO. 1)

DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION OF
DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Duluth, Winnipeg and Pacific Railway Company ("DWP"), a common carrier by rail, hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) for the acquisition of overhead trackage rights over a line of railroad of Duluth, Missabe and Iron Range Railway Company ("DMIR") between Carson/Adolph, Minnesota and DMIR's Proctor Yard in Proctor, Minnesota (near Duluth), a distance of approximately 6.1 miles. The proposed trackage rights represent an amendment and extension of rights previously presented to the Board in Finance Docket No. 34424 (Sub-No. 1), Duluth, Winnipeg and Pacific Railway Company -- Trackage Rights Exemption -- Duluth, Missabe and Iron Range Railway Company and Finance Docket No. 35045, Duluth, Winnipeg and Pacific Railway Company -- Amended Trackage Rights Exemption -- Duluth, Missabe and Iron Range Railway Company.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), DWP submits the following information:

Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

DWP and DMIR are indirect subsidiaries of Canadian National Railway Company ("CNR"). See Canadian National Railway Company and Grand Trunk Corporation -- Control --

Duluth, Missabe and Iron Range Railway Company, et al., Finance Docket No. 34424 (STB served April 9, 2004) ("CN/GLT") (CN control of DMIR).¹ DWP and DMIR operate largely parallel lines extending north toward Canada from the Twin Ports of Duluth, Minnesota and Superior, Wisconsin. Pokagama Yard is DWP's major yard facility in the Twin Ports, while the larger Proctor Yard serves as DMIR's major terminal facility in the area.

Pursuant to an arrangement dating from 2004, DWP and DMIR operate on a paired track basis between Nopeming Junction, Minnesota (near Duluth) and Shelton Junction, Minnesota with each carrier having overhead trackage rights on the other carrier's parallel line. See CN/GLT at 19-20; Duluth, Winnipeg and Pacific Railway Company -- Trackage Rights Exemption -- Duluth, Missabe and Iron Range Railway Company, Finance Docket No. 34424 (Sub-No. 1) (STB served April 9, 2004). In 2007, the parties made minor modifications to the existing trackage rights agreements on these line segments. See Duluth, Winnipeg and Pacific Railway Company -- Amended Trackage Rights Exemption -- Duluth, Missabe and Iron Range Railway Company, Finance Docket No. 35045 (STB served June 29, 2007), 72 Fed. Reg. 35739. By decision served October 19, 2009, the Board denied a petition filed by the United Transportation Union seeking to revoke the 2007 amendments and several related trackage rights arrangements in the Twin Ports area. Duluth, Winnipeg and Pacific Railway Company -- Amended Trackage Rights Exemption -- Duluth, Missabe and Iron Range Railway Company, Finance Docket No. 35045, et al. (STB served October 19, 2009).

DWP's existing trackage rights on DMIR's Nopeming Junction-Shelton Junction line do not provide access to DMIR's Proctor Yard in Proctor, Minnesota, which is located

¹ CN's U.S. rail subsidiaries, including DWP and DMIR, are held by Grand Trunk Corporation ("GTC"), a wholly-owned direct subsidiary of CNR, and report to the Board on a consolidated basis under the GTC name.

several miles east on a separate DMIR line which connects with the Nopeming Junction-Shelton Junction line at Carson/Adolph.

Pursuant to a written Amendment Agreement to be executed by DWP and DMIR, further amending the initial 2004 agreement between the parties, DWP now proposes to acquire overhead trackage rights over DMIR's line of railroad between Milepost 12.8 at Carson/Adolph, Minnesota and Milepost 6.7 at Proctor, Minnesota (2,000 feet beyond the south switch into DMIR's Proctor Yard), a distance of approximately 6.1 miles. The proposed trackage rights include the right to enter and exit the Nopeming Junction-Shelton Junction line at Carson/Adolph, and provide access from that line into DMIR's Proctor Yard for interchange purposes.

The full name and address of the applicant carrier herein is as follows:

Duluth, Winnipeg and Pacific Railway Company
17641 South Ashland Avenue
Homewood, Illinois 60430
(708) 332-4381

Any questions concerning this Notice should be sent to DWP's representative at the following address:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1508

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

DWP intends to consummate the proposed trackage rights transaction on November 25, 2009.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

By allowing DWP trains to operate into and out of the DMIR Proctor Yard, the proposed trackage rights will increase interchange efficiency and help optimize traffic flows in the Twin Ports terminal. DWP trains currently operate into the relatively small DWP Pokagama Yard, which has significant capacity constraints (particularly during seasonal traffic peaks). In addition, trains departing Pokagama Yard face a steep ruling grade at Steelton to the west that compounds further the bottleneck nature of operations at Pokagama. Use of the larger DMIR Proctor Yard, which CN is currently upgrading, for certain functions currently performed at Pokagama Yard will improve rail operations and fluidity in the Twin Ports.

The proposed trackage rights will simply result in certain DWP trains operating to and from one CN yard in the Twin Ports area (Proctor Yard) rather than another (Pokagama Yard). DWP crews will continue to remain subject to their own collective bargaining agreements at all times while operating DWP trains.

States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

DWP owns or operates over rail property in the states of Minnesota and Wisconsin.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map of the rail line over which DWP proposes to acquire trackage rights is attached hereto as Exhibit 1.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A draft of the proposed Amendment Agreement to be executed by DWP and DMIR is attached hereto as Exhibit 2. A copy of the final, signed version of the agreement will

be filed with the Board within ten days of execution, pursuant to 49 C.F.R. § 1180.6(a)(7)(ii). Copies of the underlying 2004 trackage rights agreement between DWP and DMIR and the prior 2007 amendment to that agreement were previously filed with the Board in Finance Docket No. 34424 (Sub-No. 1), Duluth, Winnipeg and Pacific Railway Company -- Trackage Rights Exemption -- Duluth, Missabe and Iron Range Railway Company and Finance Docket No. 35045, Duluth, Winnipeg and Pacific Railway Company -- Amended Trackage Rights Exemption -- Duluth, Missabe and Iron Range Railway Company.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

As a condition to this exemption, DWP agrees to imposition of the employee protective conditions established in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry. Inc. -- Lease and Operate, 360 I.C.C. 653 (1980).

Caption Summary: 49 C.F.R. § 1180.4(g)(2)(i)

A caption summary of this transaction suitable for publication in the *Federal Register* is attached hereto as Exhibit 3.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of trackage rights by DWP is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), the proposed acquisition of trackage rights by DWP also is exempt from historic preservation reporting requirements.

Respectfully submitted,

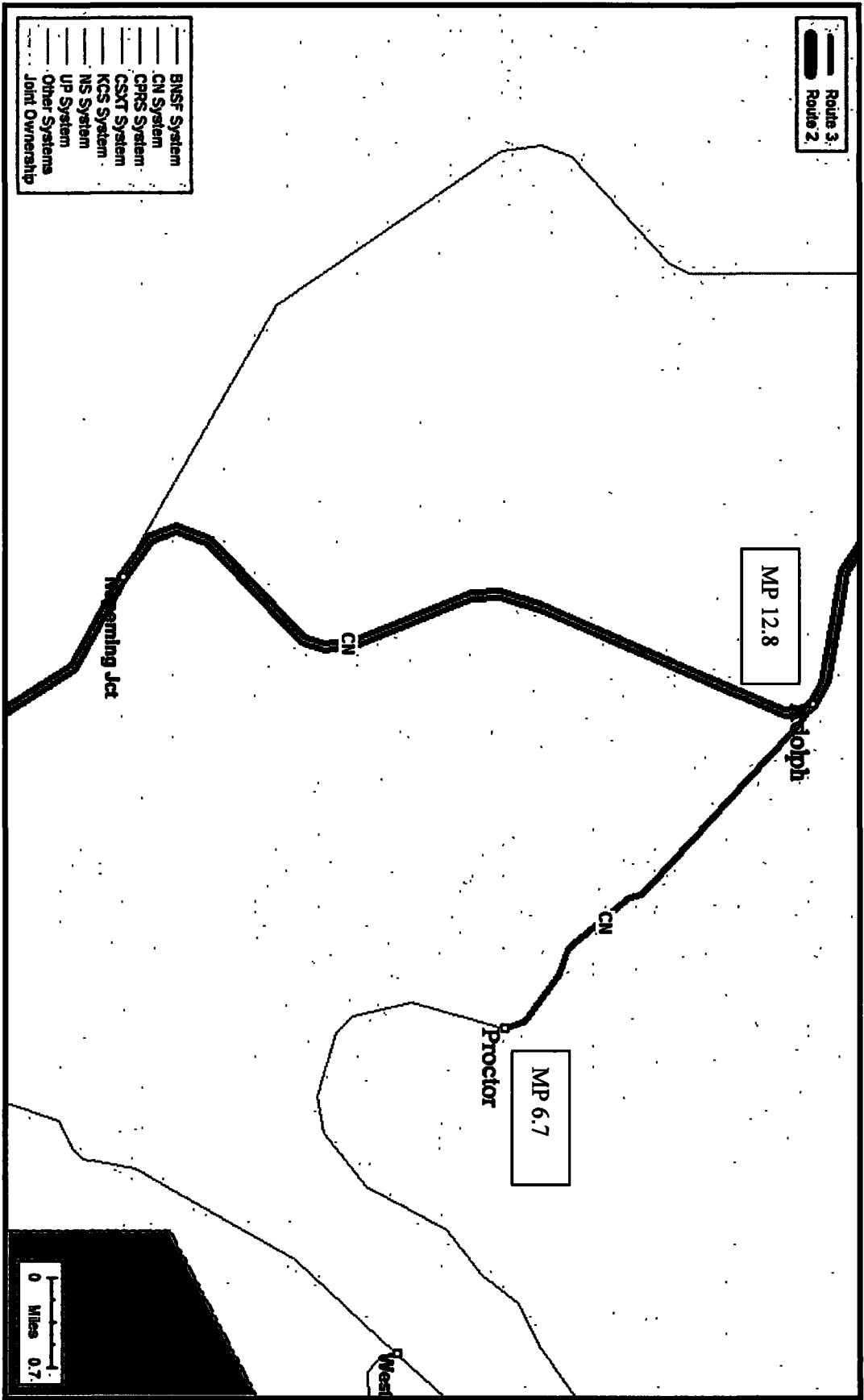
By: 

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**ATTORNEYS FOR DULUTH, WINNIPEG
AND PACIFIC RAILWAY COMPANY**

Dated: October 23, 2009



[DRAFT]

AMENDMENT AGREEMENT

THIS AMENDMENT AGREEMENT, entered into as of this ____ day of October 2009 by and between **DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY**, (hereinafter referred to as “DMIR” or “Owner”) and **DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY**, (hereinafter referred to as “DWP” or “User”).

WITNESSETH:

WHEREAS, DMIR and DWP made and entered into a certain agreement on November 5, 2003, (“Trackage Rights Agreement”) which provides among other things for DWP’s use of DMIR trackage between Nopeming Junction and Shelton Junction in the State of Minnesota; and

WHEREAS, DMIR and DWP made and entered into a certain amendment to the Trackage Rights Agreement dated June 4, 2007, which provides among other things for DWP’s use of DMIR trackage between Nopeming Jct, MN and Shelton Junction, MN and further provided for the overhead movements, reblocking cars within a single train operated by DWP and setting out cars requiring service; and

WHEREAS, DMIR and DWP desire to amend the Trackage Rights Agreement to eliminate certain limitations and restrictions currently as it relates to the use of the Subject Track age.

NOW, THEREFORE, The parties hereto, intending to be legally bound, agree as follows:

- 1) The following shall be added to Section 1.1 of the Trackage Rights Agreement:
 - Between Carson, MN Mileage 12.8 via Adolph, MN, Mileage 10.7, with rights to enter and exit at Adolph, and two thousand (2,000) feet beyond the south switch into DMIR’s Proctor Yard at or near Mileage 6.7 all on DMIR’s Missabe Subdivision and any tracks, including main lines, yard leads or any yard tracks, that will be used to effect interchange under this Agreement, a distance of approximately 6.1 miles, all in the State of Minnesota.
 - The total distance of the Subject Trackage is approximately 69.92 miles
- 2) Exhibit A of the Trackage Rights Agreement shall be replaced in its entirety with a new Exhibit “A” attached hereto and made a part hereof.
- 3) Section 2.5 of the Trackage Rights agreement shall be replaced in its entirety with the following:
 - The trackage rights herein granted are granted for the purpose of User using same for overhead traffic between the terminal of the Subject Trackage, reblocking cars within single trains operated by User, or setting out cars requiring servicing.

[DRAFT]

- 4) No term or provision of this Amendment Agreement shall be construed as prohibiting the parties from operating under existing trackage rights agreements, in the event the parties are unable to obtain regulatory exemption or approval, as applicable, or implementing agreements that are acceptable to the parties.
- 5) Except as specifically herein modified, all other terms and conditions of the Trackage Rights Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto execute this Amendment Agreement, in duplicate, as of the day and year first above written.

**DULUTH, MISSABE AND IRON RANGE
RAILWAY COMPANY**

By _____

Paul E. Ladue

Its: Region Director Contracts & Administration

Date: October __, 2009

**DULUTH, WINNIPEG & PACIFIC
RAILWAY COMPANY**

By: _____

John E. Merrill

Manager Contracts

Date: October __, 2009

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35045 (SUB-NO. 1)

**DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY**

Duluth, Missabe and Iron Range Railway Company ("DMIR") will agree to grant overhead trackage rights to Duluth, Winnipeg and Pacific Railway Company ("DWP") over DMIR's line of railroad between milepost 12.8 at Carson/Adolph, Minnesota and milepost 6.7 at DMIR's Proctor Yard in Proctor, Minnesota (near Duluth), a distance of approximately 6.1 miles. The trackage rights will be effective on November 25, 2009.

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: November __, 2009

By the Board

Anne K. Quinlan
Acting Secretary

VERIFICATION

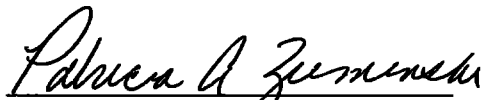
State of Illinois)
)
County of Cook) SS:

Paul E. Ladue, being duly sworn, deposes and says that he is Director Contracts and Administration for Duluth, Winnipeg and Pacific Railway Company, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



Paul E. Ladue

SUBSCRIBED AND SWORN TO
before me this 23rd day
of October, 2009.



Notary Public

My Commission expires:

